

Office Action Summary

Application No.

10/528,401

Applicant(s)

KANEKO ET AL.

Examiner

Nelson D. Hernández Hernández

Art Unit

2622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6, 8-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6, 8-11 and 13 is/are allowed.
- 6) ☒ Claim(s) 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date: 20090121
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Examiner acknowledges the amended claims filed on December 31, 2008.

Claims 4-6 and 8-23 have been amended. **Claims 1-3, 7, 14, and 17** have been cancelled. **Claims 15 and 16** have been withdrawn as they belong to a Non-Elected Species.

Response to Arguments

2. Applicant's arguments filed December 31, 2008 have been fully considered but they are not persuasive. The Applicant argues the following:

a. Claims 15-16 were withdrawn from consideration following the election of species requirement dated June 30, 2008. However, since allowed generic claims remain in this application, the withdrawal of that election of species requirement is respectfully solicited.

➤ As discussed in a telephone call with William Frommer (Attorney on record) on January 15, 2009, the Examiner indicated that in order to consider a rejoinder of **claims 15-16**, the claims should be amended to require the limitations indicated as allowable subject matter of any of the elected claims 4-6 and 8-11 as indicated in the previous Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 12** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. **Claim 12** recites the limitation " wherein, if input of the image pick-up setting information is stopped when higher priority is set to a frame rate based on the image pick-up setting information than a frame rate instructed by the frame rate instruction means, the operation control means sets a frame rate set before the input of the image pick-up setting information as the frame rate of the variable frame-rate picked-up image" in line 12. There is insufficient antecedent basis for this limitation in the claim. The Examiner noted that in the previous Office Action claim 12 was indicated as being objected to as being allowable in claim 11 was amended to include all the limitations of claim 7. Claim 12 as originally presented was dependent from claim 11. Claim 12 as now presented appear to have the limitations of claim 7. However, claim 12 recites elements that were only present in claim 11 as originally presented but not in claim 7.

Allowable Subject Matter

6. **Claims 4-6, 8-11 and 13** are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter:
 8. A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis:
 - (A) the claim limitations must use the phrase “means for” or “step for”;
 - (B) the “means for” or “step for” must be modified by functional language; and
 - (C) the phrase “means for” or “step for” must not be modified by sufficient structure, material, or acts for achieving the specified function.

In light of the limitations presented by independent **claims 4-6 and 8-13** examined under the 35 U.S.C. 112 sixth paragraph standards.

9. **Regarding claim 4**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, that the setting information generation means makes information of a scan line position and a pixel position of an image signal included in the image pick-up setting, said information being generated by the image signal generation means information.
10. **Regarding claim 5**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of

the present claim, holding means for holding a frame rate alteration pattern, wherein when reading the frame rate alteration pattern held in the holding means and instructing a frame rate in accordance with this read frame rate alteration pattern to vary a frame rate of the variable frame-rate picked-up image, the setting information generation means makes information indicating the read frame rate alteration pattern included in the image pick-up setting information; and wherein the drive-and-control means drives and controls the image signal generation means, starting from a frame of the variable frame-rate pricked-up image that is given first after the image pick-up setting information is output, by setting the instructed frame rate as a frame rate of the variable frame-rate picked-up image.

11. **Regarding claim 6**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, a plurality of frame rate instruction means each for instructing a frame rate of the variable frame-rate picked-up image; and operation control means for setting priority sequence to the plurality of frame rate instruction means, to set a frame rate instructed by the frame rate instruction means that has the highest priority as a frame rate of the variable frame-rate picked-up image, wherein the setting information generation means generates image pick-up setting information which is used to generate an image signal that is frame-synchronized with an image signal having the set frame rate of the variable frame-rate picked-up image.

12. **Regarding claim 8**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, that if the image pick-up setting information contains frame rate information indicating a frame rate of the reference variable frame-rate picked-up image, the drive-and-control means drives the image signal generation means, starting from a frame of the variable frame-rate picked-up image that is given first after this image pick-up setting information is input, by setting a frame rate indicated by the frame rate information contained in the input image pick-up setting information as a frame rate of the variable frame-rate picked-up image.

13. **Regarding claim 9**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, that if the image pick-up setting information contains information of a scan line position and a pixel position, the drive-and-control means synchronizes an image signal generated by the image signal generation means with the scan line position and the pixel position.

14. **Regarding claim 10**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, holding means for holding a frame rate alteration pattern, wherein, if the image pick-up setting information includes information which is used to read the frame rate alteration pattern, the holding means reads the frame rate alteration pattern

indicated by this information and instructs a frame rate in accordance with this read frame rate alteration pattern; and wherein the drive-and-control means drives the image signal generation means, starting from a frame of the variable frame-rate picked-up image that is given first after the image pick-up setting information is input, by setting the frame rate instructed by the holding means as a frame rate of the variable frame-rate picked-up image.

15. **Regarding claim 11**, the main reason for indication of allowable subject matter is because the prior art fails to teach or reasonably suggest, including all the elements of the present claim, frame rate instruction means for instructing a frame rate of the variable frame-rate picked-up image; and operation control means for setting priority sequence to the frame rate instructed by the frame rate instruction means and the frame rate based on the image pick-up setting information, to set the frame rate that has higher priority as the frame rate of the variable frame-rate picked-up image, wherein the drive-and-control means drives the image signal generation means by using the frame rate of the variable frame-rate picked-up image as the frame rate that is set by the operation control means.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nelson D. Hernández Hernández whose telephone number is (571)272-7311. The examiner can normally be reached on 9:00 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner
Art Unit 2622

NDHH
January 21, 2009

/Lin Ye/
Supervisory Patent Examiner, Art Unit 2622